



Rep. Dan Brady

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1 AMENDMENT TO SENATE BILL 2673

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2673 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Disposition of Remains Act is amended by  
5 changing Sections 5, 10, 15, and 40 as follows:

6 (755 ILCS 65/5)

7 Sec. 5. Right to control disposition; priority. Unless a  
8 decedent has left directions in writing for the disposition or  
9 designated an agent to direct the disposition of the decedent's  
10 remains as provided in Section 65 of the Crematory Regulation  
11 Act or in subsection (a) of Section 40 of this Act, the  
12 following persons, in the priority listed, have the right to  
13 control the disposition, including cremation, of the  
14 decedent's remains and are liable for the reasonable costs of  
15 the disposition:

16 (1) court appointed guardian or the person designated  
17 in a written instrument that satisfies the provisions of  
18 Sections 10 and 15 of this Act;

19 (2) any person serving as executor or legal  
20 representative of the decedent's estate and acting  
21 according to the decedent's written instructions contained  
22 in the decedent's will;

23 (3) the individual who was the spouse of the decedent  
24 at the time of the decedent's death;

1           (4) the sole surviving competent adult child of the  
2           decedent, or if there is more than one surviving competent  
3           adult child of the decedent, the majority of the surviving  
4           competent adult children; however, less than one-half of  
5           the surviving adult children shall be vested with the  
6           rights and duties of this Section if they have used  
7           reasonable efforts to notify all other surviving competent  
8           adult children of their instructions and are not aware of  
9           any opposition to those instructions on the part of more  
10          than one-half of all surviving competent adult children;

11          (5) the surviving competent parents of the decedent;  
12          if one of the surviving competent parents is absent, the  
13          remaining competent parent shall be vested with the rights  
14          and duties of this Act after reasonable efforts have been  
15          unsuccessful in locating the absent surviving competent  
16          parent;

17          (6) the surviving competent adult person or persons  
18          respectively in the next degrees of kindred or, if there is  
19          more than one surviving competent adult person of the same  
20          degree of kindred, the majority of those persons; less than  
21          the majority of surviving competent adult persons of the  
22          same degree of kindred shall be vested with the rights and  
23          duties of this Act if those persons have used reasonable  
24          efforts to notify all other surviving competent adult  
25          persons of the same degree of kindred of their instructions  
26          and are not aware of any opposition to those instructions  
27          on the part of one-half or more of all surviving competent  
28          adult persons of the same degree of kindred;

29          (7) in the case of indigents or any other individuals  
30          whose final disposition is the responsibility of the State  
31          or any of its instrumentalities, a public administrator,  
32          medical examiner, coroner, State appointed guardian, or  
33          any other public official charged with arranging the final  
34          disposition of the decedent;

1           (8) in the case of individuals who have donated their  
 2 bodies to science, or whose death occurred in a nursing  
 3 home or other private institution, who have executed  
 4 cremation authorization forms under Section 65 of the  
 5 Crematory Regulation Act and the institution is charged  
 6 with making arrangements for the final disposition of the  
 7 decedent, a representative of the institution; or

8           (9) any other person or organization that is willing  
 9 to assume legal and financial responsibility.

10          As used in Section, "adult" means any individual who has  
 11 reached his or her eighteenth birthday.

12          (Source: P.A. 94-561, eff. 1-1-06.)

13          (755 ILCS 65/10)

14          Sec. 10. Form. The written instrument authorizing the  
 15 disposition of remains under paragraph (1) of Section 5 of this  
 16 Act shall be in substantially the following form:

17          "APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

18           I, ....., being of sound  
 19 mind, willfully and voluntarily make known my desire that,  
 20 upon my death, the disposition of my remains shall be  
 21 controlled by ..... (name of agent first  
 22 named below) and, with respect to that subject only, I  
 23 hereby appoint such person as my agent (attorney-in-fact).  
 24 All decisions made by my agent with respect to the  
 25 disposition of my remains, including cremation, shall be  
 26 binding.

27          SPECIAL DIRECTIONS:

28           Set forth below are any special directions limiting  
 29 the power granted to my agent:

1 .....  
 2 .....  
 3 .....

4 If the disposition of my remains is by cremation, then:

5 ( ) I do not wish to allow any of my survivors the option of  
 6 canceling my cremation and selecting alternative arrangements,  
 7 regardless of whether my survivors deem a change to be  
 8 appropriate.

9 ( ) I wish to allow only the survivors I have designated below  
 10 the option of canceling my cremation and selecting alternative  
 11 arrangements, if they deem a change to be appropriate:

12 .....  
 13 .....  
 14 .....

15 ASSUMPTION:

16 THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS  
 17 APPOINTMENT, AGREES TO AND ASSUMES THE OBLIGATIONS  
 18 PROVIDED HEREIN. AN AGENT MAY SIGN AT ANY TIME, BUT AN  
 19 AGENT'S AUTHORITY TO ACT IS NOT EFFECTIVE UNTIL THE AGENT  
 20 SIGNS BELOW TO INDICATE THE ACCEPTANCE OF APPOINTMENT. ANY  
 21 NUMBER OF AGENTS MAY SIGN, BUT ONLY THE SIGNATURE OF THE  
 22 AGENT ACTING AT ANY TIME IS REQUIRED.

23 AGENT:

24 Name: .....

25 Address: .....

26 Telephone Number: .....

27 Signature Indicating Acceptance of Appointment:

28 .....

1 ~~Signature of Agent: .....~~

2 Date of Signature: .....

3 SUCCESSORS:

4 If my agent dies, becomes legally disabled, resigns, or  
5 refuses to act, I hereby appoint the following persons  
6 (each to act alone and successively, in the order named) to  
7 serve as my agent (attorney-in-fact) to control the  
8 disposition of my remains as authorized by this document:

9 1. First Successor

10 Name: .....

11 Address: .....

12 Telephone Number: .....

13 Signature Indicating Acceptance of Appointment: .....

14 Date of Signature: .....

15 2. Second Successor

16 Name: .....

17 Address: .....

18 Telephone Number: .....

19 Signature Indicating Acceptance of Appointment: .....

20 Date of Signature: .....

21 DURATION:

22 This appointment becomes effective upon my death.

23 PRIOR APPOINTMENTS REVOKED:

24 I hereby revoke any prior appointment of any person to  
25 control the disposition of my remains.

26 RELIANCE:

1 I hereby agree that any cemetery organization,  
 2 business operating a crematory or columbarium or both,  
 3 funeral director or embalmer, or funeral establishment who  
 4 receives a copy of this document may act under it. Any  
 5 modification or revocation of this document is not  
 6 effective as to any such party until that party receives  
 7 actual notice of the modification or revocation. No such  
 8 party shall be liable because of reliance on a copy of this  
 9 document.

10 ~~ASSUMPTION:~~

11 ~~THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS~~  
 12 ~~APPOINTMENT, AGREES TO AND ASSUMES THE OBLIGATIONS~~  
 13 ~~PROVIDED HEREIN.~~

14 Signed this ..... day of ....., .....

15 .....

16 STATE OF .....

17 COUNTY OF .....

18 BEFORE ME, the undersigned, a Notary Public, on this  
 19 day personally appeared ....., proved to me  
 20 on the basis of satisfactory evidence to be the person  
 21 whose name is subscribed to the foregoing instrument and  
 22 acknowledged to me that he/she executed the same for the  
 23 purposes and consideration therein expressed.

24 GIVEN UNDER MY HAND AND SEAL OF OFFICE this ..... day  
 25 of ....., 2.....

1           .....

2           Printed Name: .....

3           Notary Public, State of .....

4           My Commission Expires:

5           .....".

6           (Source: P.A. 94-561, eff. 1-1-06.)

7           (755 ILCS 65/15)

8           Sec. 15. Requirements for written instrument under  
9 paragraph (1) of Section 5 of this Act. A written instrument is  
10 legally sufficient under paragraph (1) of Section 5 if the  
11 wording of the instrument complies substantially with Section  
12 10, the instrument is properly completed, the instrument is  
13 signed by the decedent and, ~~the agent, and each successor~~  
14 ~~agent,~~ and the signature of the decedent is notarized. The  
15 agent may sign at any time, but the agent's authority to act is  
16 not effective until the agent signs the instrument. The written  
17 instrument may be modified or revoked only by a subsequent  
18 written instrument that complies with this Section.

19           (Source: P.A. 94-561, eff. 1-1-06.)

20           (755 ILCS 65/40)

21           Sec. 40. Directions by decedent.

22           (a) A person may provide written directions for the  
23 disposition or designate an agent to direct the disposition,  
24 including cremation, of the person's remains in a will, a  
25 prepaid funeral or burial contract, a power of attorney that  
26 satisfies the provisions of Article IV-Powers of Attorney for  
27 Health Care of the Illinois Power of Attorney Act and contains  
28 a power to direct the disposition of remains, a cremation  
29 authorization form that complies with the Crematory Regulation  
30 Act, or in a written instrument that satisfies the provisions

1 of Sections 10 and 15 and that is signed by the person and  
2 notarized. The directions may be modified or revoked only by a  
3 subsequent writing signed by the person, ~~and notarized.~~ The  
4 person otherwise entitled to control the disposition of a  
5 decedent's remains under this Act shall faithfully carry out  
6 the directions of the decedent to the extent that the  
7 decedent's estate or the person controlling the disposition are  
8 financially able to do so.

9 The changes made by this amendatory Act of the 94th General  
10 Assembly shall also apply to any written instrument that: (i)  
11 satisfies the provision of Article IV-Powers of Attorney for  
12 Health Care of the Illinois Power of Attorney Act; (ii)  
13 contains a power to direct the disposition of remains; and  
14 (iii) was created before the effective date of this amendatory  
15 Act.

16 (b) If the directions are in a will, they shall be carried  
17 out immediately without the necessity of probate. If the will  
18 is not probated or is declared invalid for testamentary  
19 purposes, the directions are valid to the extent to which they  
20 have been acted on in good faith.

21 (Source: P.A. 94-561, eff. 1-1-06.)

22 Section 99. Effective date. This Act takes effect upon  
23 becoming law."